

A NEW AND EXCITING OPTION FOR TENNESSEE BROWNFIELDS SITES

Division of Superfund Voluntary Cleanup Oversight and Assistance Program

“Innocent Party” (T.C.A. §68-212-224) Agreements

The Division of Superfund’s new “Innocent Party” Agreement (“IPA”) provides the most protection in a cleanup agreement available from the Department of Environment and Conservation. Thanks to the actions of the 2001 General Assembly, the Division can offer “innocent parties” an upfront agreement that gives liability protection and assures that a site is safe for future uses. The following benefits are available through this new program:

- Upfront agreement with the Division on what will be required for site closure;
- Liability protection from all TDEC regulatory programs;
- A negotiated apportioned liability as it pertains to generators and other responsible parties;
- Protection for third party lawsuits;
- Agreement from the state’s regulatory experts that a property is safe for future uses;
- Produces a 42 U.S.C. §9613(f)(4) (“CERCLA”) settlement;
- Flexibility on the amount of the VOAP entry fee; and
- Respect and appreciation for the interest of the innocent party.

The intent of the IPA is to return sites with known or suspected contamination to limited or full use. The IPA will address liability for past contamination that otherwise tends to limit the use of Brownfield sites.

Who can apply?

Anyone, including a current, future, or past landowner, who did not generate, transport, or release contamination at the site may apply to enter the program.

What will it cost?

In an effort to make more cleanup projects economically feasible, the Commissioner is exercising his authority to waive the fee for entry into this program for the coming year for sites that are not subject to potential enforcement actions by being listed on CERCLIS or promulgated as an inactive hazardous substance site. The Department does charge a modest hourly rate designed to recover actual costs associated with its oversight.

What is necessary to apply?

The Division encourages applicants to seek qualified legal counsel and environmental consultant expertise in preparing an application for IPA. The Department maintains an application that can be downloaded on the Division of Superfund web site at <http://www.state.tn.us/environment/dsf/index.html>. This application must be accompanied by a summary description of all known existing environmental investigations, studies, reports, or documents concerning the site's environmental conditions. The applicant and counsel will also be requested to submit a proposed legal agreement for consideration. A model legal agreement will be available for downloading from the Division's web site in the near future.

Will extensive risk assessments, lengthy investigations, records of decision, and/or cleanups to unrealistic clean up goals be required?

It is the intent of the Division to avoid the "traditional" superfund process to the maximum extent possible in negotiating agreements with "innocent parties". The Division has extensive experience in directing cleanups across Tennessee and is willing to use this experience to assist applicants to shorten the path to project completion. Where it is obvious to all parties what is necessary at a site, the Division will avoid unnecessary and costly steps.

Will the Division help pay for site cleanup?

On a site where liability is apportioned and an true orphan share exists, the Division may participate in cleanup. At present this participation would be through the use of state contracted consultants, with the other party(ies) to the voluntary agreement paying the non-orphan share costs. Where a property is unlikely to be cleaned up because of a large orphan share, the Division is willing to consider use of the fund again with state contractors doing the work.

Will public notice be required?

The Department is committed to giving Tennessee citizens information on its environmental decisions. The Division is sensitive to the high cost associated with publication of notices in the major newspapers and will work with applicants to accomplish the necessary public notice at the least cost.

What if I am not an innocent party?

State law allows the Commissioner to enter a consent order with any person wishing to voluntarily cleanup a site. The Department is appreciative of individuals willing to proceed with cleanup without having action directed by an enforcement order. The Division of Superfund welcomes responsible parties to make application for a VOAP consent order.

For more information, contact Andy Shivas at 615-532-0912 or by email at ashivas@mail.state.tn.us. A copy of the Innocent Party Agreement can be obtained at this link.